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Analise comparativa das 'Declarações de consenso' 1992-1998.

Para facilitar a comparação (ver sinopse) agruparam-se extractos das declarações por temas:

A - Situação geral.

Apesar dos testemunhos generalizados de que a situação dos direitos humanos se agravou nos últimos anos a Comissão de Direitos Humanos (CDH) não faz referência a este agravamento

.

B - Inquérito ao massacre de Santa-Cruz e compromissos do Governo Indonésio.

Em 1992 a CDH saudou a criação duma CDH Nacional Indonésia (CDHNI) e manifestou esperança de que esta comissão esclareceria o massacre. Desde 1994 a CDH lembra que estes esclarecimentos não chegaram. Em 1998 ela saúda "os esforços da CDHNI para promover e proteger os DH", esta referencia seria positiva se, encorajando estes esforços, referisse a sua total falta de resultados concretos.

C - Punição dos responsáveis, situação dos detidos.

A necessidade de investigação sobre os responsáveis do massacre de Santa-Cruz só foi mencionada em 1992. No mesmo ano a CDH apelava ao tratamento humano dos presos, julgamentos justos e libertação imediata de todos os presos não envolvidos em actos violentos. Em 1994 e 1995 a CDH pedia o respeito integral pelos direitos dos presos e a libertação antecipada dos que foram condenados. Em 1996 e 1998 qualquer referência aos julgamentos desapareceu, mas faz falta porque os tribunais não oferecem garantia de independência frente ao poder político-militar. Longe de dar resposta aos apelos da CDH o Governo indonésio continua a prender e condenar pelos mesmos motivos. Os presos de quem a CDH pedia a libertação imediata em 1992 cumprem actualmente o seu sétimo ano de prisão e a CDH continua a pedir a libertação dos presos em geral sem assinalar a completa falta de respeito pelos compromissos passados. A repetição de exigências gerais e pouco explicitas favorece a falta de respostas concretas.

D - Visitas de representantes das Nações Unidas.

A leitura das resoluções ou declarações sugere uma confusão entre meios e objectivos. A Indonésia pode autorizar a visita dum Relator Especial da CDH sem que isso signifique melhoria dos direitos humanos. A visita do Relator sobre as Execuções Extrajudiciais e Arbitrarias em 1994 ainda não foi seguida de nenhuma medida para implementar as suas recomendações (ver Amnesty International ASA 21/24/98, Março 1998). A Indonésia aceitou activar um mecanismo dificilmente recusável mas não coopera para alcançar o objectivo visado por este mecanismo. A visita do Alto Comissário aos Direitos Humanos em 1995 é outro exemplo, produziu um Memorandum de Intenção sobre a cooperação da Indonésia com as NU que só em 1998 será transformado num acordo que deveria permitir que um funcionário das NU residente na Indonésia visite Timor. Passaram três anos e continua a faltar o mais importante, a aplicação deste acordo. O compromisso assumido em 1996 de convidar um Relator Especial em 1997 não foi honrado, mas em 1998 a CDH saúda a decisão do Governo indonésio de convidar o Grupo de trabalho sobre as Detenções Arbitrárias sem mesmo assinalar o não cumprimento do compromisso imediatamente anterior. Apesar da total falta de resultados a CDH saúda também a 'intenção' do Governo indonésio de 'continuar' a cooperar com a Comissão, a palavra "continuar" está a mais.

A CDH toma ainda nota com interesse da intenção do Governo indonésio de ratificar a Convenção contra a Tortura, outro mecanismo útil se for aplicado, mas que não passa duma 'intenção' pela concretização da qual nenhuma data é sequer indicada. Só o convite ao Grupo de trabalho sobre as detenções tem data marcada para antes da próxima sessão da CDH.

E - Acesso a Timor-Leste.

Desde 1992 a Indonésia compromete-se a facilitar a entrada de organizações humanitárias e de Direitos Humanos. Desde 1994 foi acrescentado a estas organizações os media internacionais e desde 1994 a CDH toma nota do 'commitment' do Governo indonésio em 'alargar' este acesso. Será que alguma coisa foi feita (?) que possa ser 'alargada'?

F - Acção do Secretário Geral das NU.

As iniciativas do S.-G. são o que de mais positivo acontece neste processo, mas aqui ainda os resultados são quase nulos. O diálogo entre Portugal e a Indonésia sob os auspícios do S.-G. nasceu da resolução 37/80 da Assembleia Geral da ONU que reconhece o direito do povo de Timor-Leste à independência nos seus preliminares e fixa como objectivo ao diálogo "uma solução justa, global e internacionalmente aceitável". Foi em... 1982! A obstrução indonésia foi tão constante que, dezasseis anos depois, o diálogo tem por objectivo imediato "criar uma atmosfera favorável" ao próprio diálogo. Saudar as iniciativas do S.-G. sim, mas falta uma forma de assinalar a falta do cooperação indonésia.

Conclusão

O tom geral da declaração sugere que a Indonésia colaborou e quer colaborar com as N.U.. Quem estiver mais atento nota através de observações e recomendações que a situação pouco evoluiu, mas nem por isso as recomendações se fazem mais insistentes ou as observações mais criticas. O Governo da Indonésia pode furtar-se a honrar os seus próprios compromissos sem que a CDH realce o feito na sua declaração seguinte, o que constitui um incentivo tácito a continuar.

Diversas formulas de satisfação introduzidas pela primeira vez na declaração em 1998 indiciam um cuidado especial no tratamento da Indonésia; ou porque houve o sentimento que a Indonésia poderia ser mais maleável nesta situação de crise, ou porque houve vontade de poupar um regime já enfraquecido. O tom geral e a falta do objectivos precisos a curto prazo parecem indicar que é a segunda hipótese que primou; um assinalado papel activo da Austrália na fase final confirmaria esta hipótese.

Para sair deste circulo vicioso é importante:

1. que as declarações de consenso apresentem objectivos precisos de curto prazo, sem confundir objectivos e meios;
2. que as forças ou organizações que podemos globalmente qualificar como 'queixosas' acompanhem e apoiem no intervalo entre sessões da CDH o funcionamento dos mecanismos explicitamente referenciados ou de outros implicitamente requeridos para alcançar os objectivos fixados;
3. que todos os elementos recolhidos sejam trabalhados antes da próxima sessão da CDH para ilustrar tanto quanto possível o grau de sucesso ou insucesso das medidas propostas;
4. que o projecto de resolução ou a declaração de consenso da próxima CDH referem claramente os resultados obtidos ou a falta deles para cada um dos objectivos anteriormente fixados. Esta referência é essencial para sair dos círculos viciosos e começar a progredir.

É necessário tirar o melhor partido possível dos instrumentos disponíveis na declaração de 1998:

1. Objectivos precisos de curto prazo;
   Embora não tão precisos como se desejaria devem ser acompanhados e avaliados os objectivos seguintes contidos na declaração de 1998:
   - clarificação das circunstâncias do incidente de Dili em 1991,
   - tratamento humanitário, julgamento rápido *(e justo)* dos presos, libertação antecipada dos que foram condenados.
2. Mecanismos
   a) explicitamente referenciados:
   - Apoiar com informações concretas:
     - a visita do Grupo de Trabalho sobre as Detenções Arbitrárias.
   - Acompanhar e avaliar o contributo da Indonésia nos seguintes processos:
     - a visita do Grupo de Trabalho sobre as Detenções Arbitrárias;
     - a ratificação da Convenção contra a tortura;
     - a cooperação técnica com o Alto Comissariado para os direitos humanos, e em particular o acesso do funcionário da ONU a Timor-Leste;
     - o desenvolvimento e os resultados dos diálogos sob os auspícios do Secretário Geral da ONU, diálogos Portugal-Indonésia e intra-timorenses.

   b) implicitamente requeridos:
   - Promover visitas de organizações de direitos humanos e jornalistas, e publicitar tanto as recusas e dificuldades encontradas como o resultado de eventuais visitas.
3. Recolha de informações e avaliação de sucessos ou insucessos das medidas propostas:
   - as informações sobre violações dos direitos humanos e os trabalhos de avaliação das medidas propostas (ver por exemplo o relatório da Amnesty International sobre a não aplicação das medidas propostas pelo relator especial sobre as execuções em 1998), devem ser divulgados ou pelo menos comunicados aos que podem intervir na elaboração de relatórios ou na feitura das futuras resoluções ou declarações de consenso.
4. Redacção de futuras resoluções ou declarações de consenso:
   - ficou provado que grande parte do processo se joga na elaboração da resolução e durante a CDH na eventual transformação da resolução em declaração de consenso. Os principais intervenientes neste processo são os representantes da presidência rotativa da União Europeia e de Portugal enquanto potência administrante. Devem ser objectivos prioritários da informação e pressão.

Synopsis of UNCHR chairman's statements in 1992 and 1994-1996 and 1998.

	chairman's statement 4/3/1992	chairman's statement 8/3/1994	chairman's statement 1/3/1995	chairman's statement 25/4/1996	chairman's statement 24/4/1998
A	. The Commission on Human Rights notes with serious concern the human rights situation in East Timor, and strongly deplores the violent incident in Dili, on 12 November 1991, which resulted in the loss of lives and injuries of a large number of civilians and in many unaccounted for.(1)	. The Commission on Human Rights discussed the human rights situation in East Timor. The Commission notes with concern continuing allegations of human rights violations in East Timor, while recognising the positive measures taken by the Government of Indonesia to improve the situation.(1)	. The commission expresses its deep concern over the continuing reports of violations of human rights in East Timor, including the recently reported increased tensions and the violent incident where six people were killed. It welcomes the decision of the Indonesian Government to investigate this incident and to make public its findings.(1)	. The Commission on Human Rights discussed the human rights situation in East Timor.(1) . The Commission continues to follow with deep concern the reports on violations of human rights in East Timor (2)	. The Commission on Human Rights discussed the human rights situation in East Timor.(1) . The Commission continues to follow with deep concern the reports on violations of human rights in East Timor (2)
B	. The Commission welcomes the early action of the Indonesian Government in setting up a national commission of inquiry and the prompt response which its advance report elicited from the highest Indonesian authorities; . Expresses its hope that, as announced by the Indonesian Government, further investigation into the action of the security personnel on November 12, 1991, and into the fate of those unaccounted for, will clarify the remaining discrepancies, namely on the number of people killed and those missing.(2)	. The Commission recalls the undertakings by the Government of Indonesia to promote human rights in East Timor and those contained in the consensus Chairman's Statement at its 48th session on the matter, and stresses the need to take further steps towards its implementation.(2) . A matter of preoccupation to the Commission is the incomplete information concerning the number of people killed and the persons unaccounted for as a result of the Dili violent incident of 12 November 1991. While acknowledging the efforts made to account for those persons, the Commission calls upon the Government of Indonesia to continue its investigation on those still missing and the circumstances surrounding the matter.(3)	. A matter of preoccupation to the Commission is the incomplete information concerning the number of people killed and the persons still unaccounted for as a result of the Dili violent incident of 12 November 1991. While acknowledging the efforts made to account for those people, the Commission calls upon the Government of Indonesia to continue its investigation on those missing and the circumstances surrounding the matter.(3)	. The Commission recalls the undertakings by the Government of Indonesia to promote human rights in East Timor and those contained in Chairman's Statement at previous sessions on the matter.(3a) (see C 3b)	. The Commission welcomes the efforts of the Indonesian National Commission on Human Rights to promote and protect human rights and undertake fact-finding enquires into human rights violations, including through its office in Dili.(5a) . The Commission recalls the undertakings by the Government of Indonesia to promote human rights in East Timor and those contained in Chairman's Statements on the matter at previous sessions. (3a) . The Commission reiterates the need for further clarification of the circumstances surrounding the Dili incident of 1991.(3c)

C	. The Commission is encouraged by the recent announcement by the Indonesian authorities of disciplinary measures and military court proceedings regarding some members of its Armed Forces and urges the Indonesian Government to bring to trial and punish all those found responsible. Furthermore the Commission calls upon the Indonesian authorities to ensure that all civilians arrested on the occasion are treated humanely, that those brought to trial are assured of proper legal representation and fair trial and that those not involved in violent activities are released without delay .(3)	. It calls upon the Indonesian authorities to ensure that those East Timorese in custody are treated humanely, and that their rights are fully respected, and to take further appropriate measures aimed at the early release of those convicted.(5b)	. It calls upon the Indonesian authorities to ensure that all those in custody are treated humanely, and their rights fully respected, and to take further appropriate measures aimed at the early release of those convicted.(4b)	. The Commission stressed the need to take further steps towards their implementation, including the early release of East Timorese detained or convicted and the further clarification of the circumstances surrounding the Dili incident of 1991.(3b)	. The Commission stresses the need for their implementation, including concrete steps on the early trial and release of East Timorese detained or convicted, and for those in custody to be treated humanely. (3b)

D	. The Commission welcomes the appointment of Mr. Amos Wako, as Personal Envoy of the Secretary General of the United Nations, to obtain clarification on the tragic events of November 12, 1991 and the willingness of the Indonesian authorities to cooperate fully with him.(4a) . The Commission urges the Government of Indonesia to improve the human rights situation in East Timor: commends the report entitled "Visit by the Special Rapporteur to Indonesia and East Timor" of its Special Rapporteur on Torture folowing his visit at the invitation of the Indonesian Government; urges the Indonesian authorities to take the necessary steps to implement its recommendations and looks forward to a report thereon;(5a)	. The Commission welcomes the undertaking by the Government of Indonesia to invite the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to visit East Timor and to submit his report to its fifty-first session. In the same spirit, the Commission takes note of the intention of the Government of Indonesia to continue to cooperate with other relevant thematic special Rapporteurs and/or working groups and to invite them to visit East Timor when necessary for the fulfillment of their duties.(7)	. The Commission welcomes the visit to East Timor in July 1994 by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the cooperation granted to him by the Indonesian authorities. The Commission takes note with concern of his report (doc E/CN.4/1995/61/Add.1) and urges the Indonesian Government to further implement its undertakings to promote human rights in East Timor, and those contained in the consensus Chairman's Statement at its 48th and 50th sessions.(2) . The Commission welcomes the undertaking by the Government of Indonesia to invite the High Commissioner for Human Rights to visit East Timor in 1995 and to submit his report to the Commission at its 52nd session. The Commission further takes note of the intention of the Government of Indonesia to continue to cooperate with the relevant thematic Special Rapporteurs and/or Working Groups of the Commission on Human Rights, and to invite them, taking into consideration their requests to visit East Timor when necessary for the fulfillment of their duties.(6)	. The Commission welcomes the visit to East Timor of the High Commissioner (HC) for Human Rights, Mr. José Ayala Lasso, on 6 December 1995, and stressed the importance of this visit in the context of last year's Chairman's Statement. The Commission notes with satisfaction the understanding reached between the Indonesian authorities and the HC concerning the upgrading of the current MOI (Memorandum of Intention) on the technical cooperation in the field of human rights, signed in Jakarta on 26 October 1994, into an MOU (Memorandum of Understanding). In this context, it was also provisionally agreed to look into the possibility of the HC assigning a programme officer within the office of UNDP (UN Development Programme) in Jakarta in order to follow-up the implementation of the technical cooperation agreement. This officer would also have regular access to East Timor.(5) . The Commission welcomes the intention of the Government of Indonesia to continue to cooperate with the Commission on HR and its mechanisms as well as its intention to invite a thematic rapporteur in 1997.(6)	. The Commission welcomes the intention of the Government of Indonesia to continue to cooperate with the Commission on Human Rights and its mechanisms, and, in particular, the Government's decision to invite the Working Group on Arbitrary Detentions to visit East Timor in advance of the fifty-fifth session of the commission.(6) . The Commission notes with interest the Government of Indonesia's decision to launch a National Plan of Action on human rights in 1998, and, in that context, the Government's intention to ratify the Convention against Torture.(7) . The Commission welcomes the advanced progress towards concluding the Memorandum of Understanding between the Government of Indonesia and the Office of the High Commissioner for Human Rights on technical cooperation and agreement on the early assignment of a programme officer to implement the technical cooperation programme. In this regard, the Commission notes the understanding between the Government of Indonesia and the High Commissioner for Human Rights concerning access of the programme officer to East Timor, within the framework of technical cooperation.(4)

E	. Calls on the Indonesian Government to facilitate access to East Timor for additional humanitarian organizations and for human rights organizations;(5b)	. The Commission expressed the hope that the cooperation between the ICRC and the Government of Indonesia will continue.(5a) The Commission is encouraged by greater access granted by the Indonesian authorities to human rights and humanitarian organizations as well as international media and calls upon them to continue this policy of expanding access.(6)	. The Commission expresses the hope that the cooperation between the ICRC and the Government of Indonesia will continue.(4a) . The Commission recognises the greater access granted by the Indonesian authorities to East Timor and calls upon them to continue this policy including the granting of access to human rights and humanitarian organizations and international media.(5)	. The Commission notes with satisfaction the greater access recently granted by the Indonesian authorities to East Timor to international media and humanitarian organizations and trusts that it will be expanded further to human rights organizations.(4)	. The Commission notes the Commitment by the Government of Indonesia to continue to allow greater access to East Timor by the international media and international humanitarian organisations.(5b)
F	. The Commission encourages the Secretary General to continue his good offices for achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor.(4b)	. The Commission welcomes the current dialogue between Indonesia and Portugal under the auspices of the Secretary General and encourages him to continue his good offices in order to achieve a just, comprehensive and internationally acceptable settlement of the question of East Timor In this context, the Commission stresses the importance of the understanding reached on confidence building measures between the two governments and welcomes the recent mission undertaken by Mr. Francesc Vendrell as representative of the Secretary General in order to promote further progress in that dialogue.(9)	. The Commission welcomes the result of the fifth round of meetings of the Foreign Ministers of Indonesia and Portugal held under the auspices of the Secretary General on 9 January 1995 in Geneva and encourages the Secretary General to continue his good offices in order to achieve a just, comprehensive and internationally acceptable settlement of the question of East Timor. In this context, the Commission stresses the importance of continuing the efforts to promote confidence building measures between the two governments. The Commission welcomes the Secretary General's intention, as expressed in his statement of 9 January 1995, to facilitate and offer the necessary arrangements for the convening of an all inclusive intra-East Timorese dialogue.(7)	. The Commission welcomes the result of the seventh round of the tripartite dialogue between the Foreign Ministers of Indonesia and Portugal under the auspices of the U.N. Secretary General on the question of East Timor, held in London on 16 January 1996 and encourages the S.G. to continue his good offices for achieving a just, comprehen-sive and internationally acceptable solution to the question of East Timor.(7) . The Commission welcomes the informal bilateral meeting between President Soeharto and Prime Minister Guterres during the ASEM in Bangkok on 29 February 1996 and expresses the hope that it will contribute positively to the ongoing tripartite dialogue. The Commission also welcomes the holding of the all-inclusive intra-Timorese dialogue in Burg Schlaining, Austria, from 19 to 22 March 1996.(8)	. The Commission welcomes the dialogue under the auspices of the Secretary-General for achieving a just, comprehensive and internationally acceptable solution to the question of East Timor. In this context, the Commission stresses the need for constructive actions in order to promote a favourable atmosphere for further progress towards a solution. The Commission welcomes the report of the Secretary General, the work of his special representative, in particular, the establishment of regular dialogue at senior official level, and the continuing all inclusive intra-East Timorese dialogue.(8)

G	. and requests the Secretary General to continue to follow closely the human rights situation in East Timor and to keep the Commission informed at its 49th session.(5c)	. The Commission requests the Secretary General to keep it informed on the situation of human rights in East Timor and will consider it at its fifty-first session. (10)	. The Commission requests the Secretary General to keep it informed on the situation of human rights in East Timor and will consider it at its fifty-second session.(8)	. The Commission requests the Secretary General to keep it informed on the situation of human rights in East Timor and will consider it at its fifty-third session.(9)	. The Commission requests the Secretary General to keep it informed on the situation of human rights in East Timor and will consider the matter at its fifty-fifth session.(9)
	. This statement will be included verbatim at the 48th session of the Commission.(6)				

Notes :

1. The texts of the consensus statements and resolution adopted by the Commission on Human Rights have been split up in order to make comparison easier:
   - A - General situation
   - B - Indonesia's commitments (human rights, inquiry to find those responsible, disparities in the numbers of victims)
   - C - Punishment of those responsible, treatment of detainees
   - D - Visits by UN representatives
   - E - Access to East Timor
   - F - Secretary General's role
   - G - Keeping the subject on the Commission's agenda

2. When necessary, the above paragraphs were taken out of their order in the original texts, so that paragraphs dealing with the same aspect could be placed side by sid Some paragraphs were also split up for the same reason.

3. Numbers in parentheses at the end of each paragraph indicate the paragraph number in the original text. When a paragraph was split up because it dealt with more than o subject, a letter has been added after the respective number (e.g. 3a, 3b)

Comments :

In 1992, the UNCHR welcomed the appointment by President Suharto of an Indonesian National Human Rights Commission following the Santa Cruz massacre. However, t Commission never clarified what happened in Dili on 12 November 1991 and the days that followed.

The only positive step taken by the Indonesian Government towards honouring its commitments made at the UNCHR was to invite the Special Rapporteur on extrajudici summary or arbitrary executions to visit the territory. Nevertheless, not only has it has so far failed to implement the recommendations made by that Special Rapporteur, b also those made by the Special Rapporteur on torture.

The Indonesian Government has still not established a UN human rights office in Jakarta, as it agreed to do in December 1995 during the visit of the High Commissioner f Human Rights, Mr. José Ayala Lasso.